

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

<p>Ferdinand L. Coste, Jr., <i>individually and on behalf of, November Romeo, LLC and all aircraft owners who are to be deprived of reasonable use and access to the Long Island MacArthur Airport, an entity and premises which the Town of Islip claims to be fee owner having offices,</i></p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">-v-</p> <p>Town of Islip et al.,</p> <p style="text-align: right;">Defendants.</p>	<p>2:23-cv-1339 (NJC) (SIL)</p>
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MEMORANDUM AND ORDER

NUSRAT J. CHOUDHURY, United States District Judge:

On February 9, 2024, Defendants Town of Islip, Angie Carpenter, Islip Town Board Members John C. Cochrane, Jr., Mary Kate Mullen, John Lorenzo, James P. O'Connor, Jorge Guardon, Shelly LaRose Arkin, and John and Jane Doe # 1–10 (collectively, “Defendants”) filed a fully-briefed Motion to Dismiss the Second Amended Complaint with prejudice.¹ (ECF Nos. 54–56.) In his opposition, Plaintiff Ferdinand L. Coste (“Coste”) requested leave to amend the Second Amended Complaint or that the Court convert the Motion to Dismiss to a motion for summary judgment. (ECF No. 55.)

On June 26, 2024, Magistrate Judge Steven I. Locke issued a Report and Recommendation (the “R&R”) recommending that Defendants’ Motion to Dismiss be granted in its entirety and that Coste’s requests be denied. (R&R, ECF No. 57.) A copy of the R&R was

¹ Although the docket reflects that the motion is made on behalf of John and Jane Doe #1–10, the motion does not explain how it could be made on behalf of unidentified defendants.

provided to all counsel via ECF. (*See id.* at 41.) The R&R instructed that any objections to the R&R must be submitted in writing to the Clerk of Court within fourteen (14) days, *i.e.*, by July 10, 2024. (*Id.*) Coste sought and received two extensions of time to file objections with the final deadline being July 29, 2024. (ECF Nos. 58–59; Elec. Order, July 8, 2024; Elec. Order, July 18, 2024.)

The date for filing any objections has thus expired, and neither Coste nor any other party has filed an objection to the R&R. For the reasons set forth below, I adopt the thorough and well-reasoned R&R in its entirety, grant Defendants’ Motion to Dismiss the Second Amended Complaint with prejudice, and deny Coste’s request for leave to amend and to convert the Motion to Dismiss to a motion for summary judgment.

When no objections to a report and recommendation are filed, the Court reviews a report and recommendation on a dispositive motion for clear error. *Andrews v. LeClaire*, 709 F. Supp. 2d 269, 271 (S.D.N.Y. 2010). Because a motion to dismiss with prejudice is dispositive, and because no party has filed timely objections to the R&R, my review of the R&R must, at a minimum, constitute review for clear error.

Having conducted a review of the motion papers and the applicable law, and having reviewed the R&R *de novo* out of an abundance of caution, I adopt the findings and recommendations contained in the well-reasoned and thorough R&R in their entirety. Accordingly, I grant Defendants’ Motion to Dismiss the Second Amended Complaint with prejudice and deny Coste’s request for leave to amend and to convert the Motion to a motion for summary judgment.

Dated: Central Islip, New York
July 30, 2024

/s/ Nusrat J. Choudhury
NUSRAT J. CHOUDHURY
United States District Judge